

# Exhibit A

## CENTER ON RACE, POVERTY, & THE ENVIRONMENT

450 GEARY STREET, SUITE 500  
SAN FRANCISCO, CA 94102

415/346-4179 • FAX 415/346-8723  
E-MAIL LUKE@IGC.ORG

1224 JEFFERSON STREET, SUITE 25  
DELANO, CA 93215

661/720-9140 • FAX 661/720-9483

RALPH SANTIAGO ABASCAL (1934-1997)  
DIRECTOR 1990-1997

LUKE W. COLE  
DIRECTOR

CAROLINE FARRELL  
BRENT J. NEWELL  
STAFF ATTORNEYS

JOE MORALES  
ORGANIZER

July 3, 2003

Robert Jacko, General Manager  
Teck Cominco Alaska Incorporated  
P.O. Box 1230  
Kotzebue, Alaska 99752

Lawrence L. Hartig  
Agent for Service of Process  
Teck Cominco Alaska Incorporated  
Hartig, Rhodes, Norman, Mahoney & Edwards  
717 K Street  
Anchorage, AK 99501-3397

**Re: Updated Notice of Intent to Sue for Violations of the Federal Water Pollution Control Act (Clean Water Act)**

The Kivalina Relocation Planning Committee, Enoch Adams, Jr., Leroy Adams, Andrew Koenig, Jerry Norton, David Swan and Joseph Swan (collectively "Kivalina RPC") hereby give notice to Teck Cominco Alaska Incorporated ("Teck Cominco") of Kivalina RPC's intent to sue Teck Cominco for violations of the Clean Water Act for failure to comply with its Authorization to Discharge Under the National Pollutant Discharge Elimination System ("NPDES Permit") and failure to comply with its Compliance Order By Consent ("COBC") during its operations at the Red Dog Mine, whose Outfall 001 is located east-northeast of Kivalina, Alaska, at latitude 68° 4' 17" and longitude 162° 52' 5",<sup>1</sup> and at the Delong Mountain Port Facility, located southeast of Kivalina, Alaska, on the Chukchi Sea at latitude 67° 34' and longitude 164° 03'.

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<sup>1</sup>Outfall 002 is also subject to this permit and a site of violations noticed in this letter. According to the mine's permit, it is located at latitude 68° 1' 45", longitude 162° 54' 56".

Through this notice of intent to sue, pursuant to 33 U.S.C. §§ 1365 (a) and (b) of the CWA, Kivalina RPC gives Teck Cominco, the Administrator of the Environmental Protection Agency (“EPA”), the Regional Administrator of U.S. EPA Region X, the Commissioner of the Alaska Department of Environmental Conservation, the Commissioner of Alaska Department of Fish and Game, the Alaska Attorney General and the U.S. Attorney General of their intent to sue Teck Cominco and Red Dog for their violations of the Clean Water Act.

Teck Cominco has violated and continues to violate the conditions of its NPDES Permits (permit nos. AK 003865-2 (“mine site permit”) and AK 004064-9 (“port site permit”)), and its COBCs (Docket Nos. CWA-10-99-0167 (“Mine COBC”); and CWA-10-99-0200 (“Port COBC”)), by discharging to Middle Fork Red Dog Creek, the tundra, and the Chukchi Sea pollutants and hazardous substances in violation of the types and quantities specified in its permit.

The mine site permit conditions that Teck Cominco has violated and continues to violate are:

- Condition I(A)(1) for total dissolved solids (“TDS”), which specifies a daily maximum discharge of 196 mg/L, and a maximum monthly average discharge of 170 mg/L per day.
- Condition I(A)(1) for cyanide, which specifies a daily maximum discharge of 9 parts per billion (“ppb”) and a maximum monthly average discharge of 4 ppb per day.
- Condition I(A)(1) for cadmium, which specifies a daily maximum discharge of 3.4 ppb and a maximum monthly average discharge of 2.0 ppb per day.
- Condition I(A)(1) for selenium, which specifies a daily maximum discharge of 5.6 ppb and a maximum monthly average discharge of 4.9 ppb per day.
- Condition I(A)(1) for mercury, which specifies a daily maximum discharge of 0.02 µg/L and a maximum monthly average discharge of 0.01 µg/L per day.
- Condition I(A)(1), which requires Teck Cominco to conduct an organic priority pollutant scan in May, July and September.
- Condition I(H)(5), which specifies that whole effluent toxicity (“WET”) may not exceed a daily maximum of 12.2 chronic toxic units (“TUC”) and may not exceed a monthly average of 9.7 Tuc per day.
- Condition I(C)(2), which prohibits discharges to the tundra and requires that Teck Cominco direct all precipitation falling on the Kivalina shale pile to the tailings impoundment.
- Condition I(C)(4), which requires that the volume of water pumped from the dirty water sump to the tailings impoundment be recorded.
- Condition I(C)(7), which requires water in the seepage pond to be pumped back into the

tailings impoundment, treated, or recycled.

- Condition I(C)(8), which requires that Teck Cominco ensure that water in the seepage pond does not leak into Red Dog Creek.
- Condition J(3)(f)(iv), which requires that Teck Cominco implement erosion and sediment controls and prevent contact of construction materials with stormwater.
- A variety of self-monitoring and reporting requirements, as specified in part II.E. below.

The port site permit conditions that Teck Cominco has violated and continues to violate are:

- Condition I(A)(1), which states that “[t]his permit does not authorize the discharge of any waste streams, including spills and other unintentional or non-routine discharges of pollutants, that are not part of the normal operation of the facility as disclosed in the permit application . . .”
- Condition I(B)(5) for zinc, which requires that discharges of zinc to the Chukchi Sea contain less than a daily maximum of 1500 ppb and less than a monthly average of 750 ppb per day.
- Condition I(B)(5) for discharges of zinc to the tundra requires that the discharges meet a limit of 77.1 ppb as a daily maximum discharge and 38.4 ppb per day as a monthly average discharge.
- Condition I(B)(5) for lead, which requires that discharges of lead to the Chukchi Sea contain less than a daily maximum of 600 ppb and less than a monthly average of 300 ppb per day.
- Condition I(B)(5) for discharges of lead to the tundra requires that the discharges meet a limit of 22.5 ppb as a daily maximum discharge and 11.2 ppb per day as a monthly average discharge.
- Condition I(B)(5) for cadmium, which requires that discharges of cadmium to the Chukchi Sea contain less than a daily maximum of 100 ppb and less than a monthly average of 50 ppb per day.
- Condition I(B)(5) for discharges of cadmium to the tundra requires that the discharges meet a limit of 4.6 ppb as a daily maximum discharge and 2.3 ppb per day as a monthly average discharge.
- Condition I(A)(1) for fecal coliform, which requires that discharges from the sewage treatment plant contain concentrations of fecal coliform below a daily maximum of 1200 mg/L, a weekly average of 800 mg/L per day and a monthly average of 400 mg/L per day.
- Condition I(A)(3) which requires that discharges to the Chukchi Sea contain less than a daily maximum of 30 mg/L of Total Suspended Solids (TSS).
- Discharges of chlorine that are in violation of the permit.
- Condition II which requires biosolids to be disposed of by co-incineration.

- A variety of self-monitoring requirements as described in part III.D. below.

Because Teck Cominco has reported and continues to report discharges of pollutants in amounts exceeding these limitations, Teck Cominco is operating its mining, transportation and storage operations in violation of its NPDES permits.

Teck Cominco has violated and continues to violate the following conditions of its Compliance Orders By Consent:

- Mine COBC, Point 14: limit discharge of TDS to maintain in-stream concentrations of TDS below:
  - 1500 mg/L at Station 10, with exceedences below 1600 mg/L permissible if these do not continue for more than 48 hours in any 10 day period; and
  - 500 mg/L at Station 7 between July 25 and August 31 (original Mine COBC); 500 mg/L at Station 160 between July 25 and the end of the season (modified Mine COBC).
- Port COBC (August 24, 1999), Point 19: discharge of chlorine from Outfall 001 in concentrations greater than 0.5 mg/l is prohibited.
- Port COBC (January 12, 2000), Point 14: discharge of chlorine from Outfall 001 in concentrations of 0.1 mg/L is prohbited.
- Port COBC (January 10, 2002), Point 12: discharge of chlorine from Outfall 001 in concentrations of 0.1 mg/L is prohbited.
- Port COBC (August 24, 1999), Point 24: Discharges of zinc to the Chukchi Sea are required to be under 25,343 ppb as a maximum daily limit and under 12,631 ppb per day for the average monthly limit.

## **I. TECK COMINCO IS VIOLATING THE CLEAN WATER ACT BY FAILING TO COMPLY WITH ITS NPDES PERMITS.**

The linchpin of the national effort to clean and preserve our waters is the Clean Water Act. Under 33 U.S.C. § 1342, all discharges of pollutants to the waters of the United States must be authorized by a NPDES permit. Water-quality-based standards ensure that the discharges will not compromise the water quality of the receiving waters. Technology-based standards ensure that the discharges are kept to the minimum level achievable by current technology. **Teck Cominco's mining operations, its tailing storage, and its storage and loading of concentrates at the port site have violated its permits on over 4,084 occasions**, releasing contaminants and hazardous materials into the waters of the remote Alaskan streams, tundra and oceans in quantities that endanger environmental quality or human and animal health. Under 33 U.S.C. § 1365, citizens have

the right to enforce permit limitations, and Kivalina RPC today notifies Teck Cominco of their intent to enforce the terms of Teck Cominco's permit.

Teck Cominco's permit violations affect Kivalina RPC and other Native Alaskans who live in the vicinity of Teck Cominco's mining, transportation, and storage operations. The community relies on the waters of the Wulik River, which is downstream of Red Dog Mine Outfall 001 in Middle Fork Red Dog Creek, for their drinking water and as a source of fish for its basic subsistence. Likewise, the community fishes in the waters of the Chukchi Sea into which Teck Cominco's port facility regularly discharges hazardous substances such as zinc, cadmium, and fecal coliform. Kivalina RPC members observe that the quality of their drinking water has greatly declined since the mine began operating, noting strange tastes and colors that make the water offensive to consume. Residents also have seen changes in the location and quantity of marine mammals and fish that constitute their basic source of food. These changes have affected the way that Kivalina RPC members conduct their basic life activities, and hampered their ability to ensure an adequate supply of food for themselves and their families. Teck Cominco's violations of the Clean Water Act expose the community to poor and dangerous drinking water, threaten the health of the marine and freshwater ecosystems on which the community depends, and deprive the community of the opportunity to continue exercising its traditional lifestyle without fear of illness or exposure to dangerous contaminants.

## **II. KIVALINA RPC NOTIFIES TECK COMINCO OF ITS INTENT TO SUE TECK COMINCO FOR VIOLATIONS OF THE MINE SITE NPDES PERMIT.**

**Teck Cominco has violated the terms of its mine site permit (permit no. AK 003865-2) on more than 2,322 occasions.** Kivalina RPC intends to sue Teck Cominco for all past and ongoing violations of its NPDES permit.

### A. Total Dissolved Solids

**Condition I(A)(1) Daily Maximum Discharge violations.** Condition I(A)(1) for TDS specifies a daily maximum discharge of 196 mg/L. Teck Cominco's operations at the Red Dog Mine cause Teck Cominco to discharge TDS through Outfall 001 in quantities approximately 1500 percent higher than its maximum daily limits on every day in which the mine discharges. Kivalina RPC intends to sue Teck Cominco for these violations on all dates that the mine was discharging through Outfall 001, including but not limited to:

**1998:** August 28<sup>2</sup>, 29, 30 and 31; September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; October 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22.

**1999:** June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25,

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<sup>2</sup>August 28, 1998 is the effective date of the mine site permit.

26, 27, 28, 29 and 30; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; October 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12.

**2000:** May 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; October 1, 2, 3, 4, 5, 6 and 7.

**2001:** May 31; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; September 1, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; October 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10.

**2002:** May 26, 27, 28, 29, 30 and 31; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31; September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; October 1, 2, 3, 4, 5 and 6.

**2003:** May 9, 10, 11, 12, 13, 14, 15, 25, 26, 29 and 31. Kivalina RPC is informed and believes that violations of Teck Cominco's permit conditions for TDS are ongoing. Kivalina RPC intends to sue Teck Cominco for any violations that occur during the 2003 discharge season.

**Condition I(A)(1) Monthly Average Discharge violations.** Condition I(A)(1) for TDS specifies a maximum monthly average discharge of 170 mg/L per day. Teck Cominco has violated its permit limits on the monthly average for TDS in every month in which Teck Cominco discharges from Outfall 001. Kivalina RPC intends to sue Teck Cominco for violation of the monthly average limit in the following months: August 1998, September 1998, October 1998, May 1999, June 1999, July 1999, August 1999, September 1999, October 1999, May 2000, June 2000, July 2000, August 2000, September 2000, October 2000, May 2001, June 2001, July 2001, August 2001, September 2001, October 2001, May 2002, June 2002, July 2002, August 2002, September 2002, October 2002, May 2003, and for any additional violations of the monthly average that occur during 2003.

Because federal courts have consistently held that violations of a monthly average limit mean that the permit was violated on each day the facility operated that month, Kivalina RPC intends to sue Teck Cominco for violations of this permit condition on the following days:

**1998:** August 28, 29, 30 and 31; September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; October 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22.

**1999:** June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; October 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12.

**2000:** May 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; and October 1, 2, 3, 4, 5, 6 and 7.

**2001:** May 31; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; October 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10.

**2002:** May 26, 27, 28, 29, 30 and 31; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; October 1, 2, 3, 4, 5 and 6.

**2003:** May 9, 10, 11, 12, 13, 14, 15, 25, 26, 29 and 31. Kivalina RPC is informed and believes that violations of Teck Cominco's permit conditions for TDS are ongoing. Kivalina RPC intends to sue Teck Cominco for any violations that occur during the 2003 discharge season.

#### B. Toxic Substances: Cyanide, Cadmium, Selenium, Organic Priority Pollutant Scan, and WET

Kivalina RPC is informed and believes that Teck Cominco has violated and will continue to violate its NPDES permit conditions for a variety of other highly toxic substances, including cyanide, cadmium, mercury, selenium, and whole effluent toxicity ("WET"). Kivalina RPC intends to sue Teck Cominco for its violations of its permit for all discharges exceeding permit limits, including but not limited to the following dates:

**Condition I(A)(1) Cyanide Daily Maximum Discharge violations.** Condition I(A)(1) for cyanide specifies a daily maximum discharge of 9 ppb. Teck Cominco exceeded its daily maximum permissible concentration of cyanide on May 22, 1999; May 25 and 29, 2000; June 10, 13, and 24, 2000; June 14 and 18, 2001; July 22 and 30, 2001; August 13, 16, 20 and 27, 2001; and June 10, 2002. Two separate laboratories recorded that Teck Cominco exceeded its daily maximum permissible concentration of cyanide on September 30, 2002.

**Condition I(A)(1) Cyanide Monthly Average Discharge violations.** Condition I(A)(1) for cyanide specifies a maximum monthly average discharge of 4 ppb per day. Teck Cominco exceeded its permissible monthly average for cyanide in June 1999, July 1999, August 1999, September 1999, May 2000, June 2000, July 2000, September 2000, October 2000, June 2001, July 2001, August 2001, September 2001, May 2002 and June 2002. Two separate laboratories reported that Teck Cominco exceeded its permissible monthly average for cyanide in September 2002.

Because federal courts have consistently held that violations of a monthly average limit mean that the permit was violated on each day the facility operated that month, Kivalina RPC intends to sue Teck Cominco for violation of this permit condition on the following days:

**1999:** June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31.

**2000:** May 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; October 1, 2, 3, 4, 5, 6 and 7.

**2001:** June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; September 1, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30.

**2002:** May 26, 27, 28, 29, 30 and 31; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30.

**Condition I(A)(1) Cadmium Daily Maximum and Monthly Average Discharge violations.** Condition I(A)(1) for cadmium specifies a daily maximum discharge of 3.4 ppb and a

maximum monthly average discharge of 2.0 ppb per day. Teck Cominco exceeded its daily maximum discharge limit for cadmium on June 13, 2000, and on July 30, 2001.

Teck Cominco exceeded its maximum monthly average discharge for cadmium in October 2000 and July 2001. Because federal courts have consistently held that violations of a monthly average limit mean that the permit was violated on each day the facility operated that month, Kivalina RPC intends to sue Teck Cominco for violation of this permit condition on the following days:

**2000:** October 1, 2, 3, 4, 5, 6 and 7.

**2001:** July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31.

**Condition I(A)(1) Selenium Daily Maximum and Monthly Average Discharge**

**violations.** Condition I(A)(1) for selenium specifies a daily maximum discharge of 5.6 ppb and a maximum monthly average discharge of 4.9 ppb per day. Teck Cominco exceeded its maximum daily limit for discharges of selenium on individual days in August 1998 and September 1998, and on June 24, 2000; July 6, 2000; and July 10, 2000.

Teck Cominco exceeded its monthly average discharge limit for selenium in September 1998. Because federal courts have consistently held that violations of a monthly average limit mean that the permit was violated on each day the facility operated that month, Kivalina RPC intends to sue Teck Cominco for violation of this permit condition on the following days:

**1998:** September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30.

**Condition I(A)(1) Mercury Daily Maximum Discharge violations.** Condition I(A)(1) for mercury specifies a daily maximum discharge of 0.02 µg/L, while condition I(A)(5) permits the method detection limit of 0.2 µg/L. Lab tests from Seattle reported that Teck Cominco exceeded its daily maximum permissible concentration and method detection limit of mercury on September 3 and 17, 2002.

**Condition I(A)(1) Mercury Monthly Average Discharge violations.** Condition I(A)(1) for mercury specifies a maximum monthly average discharge of 0.01 µg/L, while condition I(A)(5) permits the method detection limit of 0.2 µg/L. Lab tests reported that Teck Cominco exceeded its permissible monthly average for mercury in September 2002.

Because federal courts have consistently held that violations of a monthly average limit mean that the permit was violated on each day the facility operated that month, Kivalina RPC intends to sue Teck Cominco for violation of this permit condition on the following days:

**2002:** September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30.

**Condition I(A)(1) Organic Priority Pollutant Scan.** Condition I(A)(1) requires Teck Cominco to conduct an organic priority pollutant scan in May, July and September. Condition I(C)(15) requires Teck Cominco not to discharge any water not specifically authorized in the permit, while testing from May 2002 reported that Teck Cominco exceeded limits of bis (2-Ethylhexyl) phthalate.

**Condition I(H)(5) Whole Effluent Toxicity Daily Maximum and Monthly Average Discharge violations.** Condition I(H)(5) specifies that Whole Effluent Toxicity (WET) may not exceed a daily maximum of 12.2 TUC and may not exceed a monthly average of 9.7 TUC per day. Teck Cominco exceeded its permit for the maximum daily limit of whole effluent toxicity on September 8, 10 and 12, 1998; in May 1999, June 1999, July 1999, August 2000; and on August 16, 18 and 20, 2001. Secondary lab tests show that Teck Cominco exceeded its maximum daily limit on one test in August 2002, and on two tests in September 2002.

Teck Cominco exceeded its monthly average limit for whole effluent toxicity in September 1998, May 1999, June 1999, July 1999, August 2000, and August 2001. Secondary lab tests show that Teck Cominco exceeded its average monthly limit in August 2002 and September 2002. Because federal courts have consistently held that violations of a monthly average limit mean that the permit was violated on each day the facility operated that month, Kivalina RPC intends to sue Teck Cominco for violation of this permit condition on the following days:

**1998:** September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30.

**1999:** May 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31.

**2000:** August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31.

**2001:** August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31.

**2002:** August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31.

### C. Discharges of Contaminated Wastewater to Tundra

**Condition I(C)(2) discharges to the tundra violation.** May 13, 1999 (300 gallons of zinc, lead, copper, and cadmium - contaminated water migrated over the top of a lined berm and onto the tundra due to pump back system failure); May 26, 2001 (overflow at the overburden stockpile pump back system caused a 2000-gallon spill to the tundra); and May 19, 22 and 23, 2002 (the Kivalina Shale pile pumping system directing runoff from the stockpile to the tailings impoundment was overtopped, resulting in discharges to the tundra).

**Conditions I(C)(6) and (7) seepage pond discharges to tundra.** Teck Cominco is required by its permit to prevent water in the seepage pond at the base of the tailings impoundment dam from entering Red Dog Creek or from escaping untreated to the tundra. Kivalina RPC intends to sue Teck Cominco for its failure to meet these requirements on November 7 and 8, 1999 (at least 6,500 gallons spilled to the tundra due to seepage pond pump failure); February 20, 2000 (seepage pond pump back overflowed 200 gallons of seepage water to the tundra); May 18, 2001 (pump failure at the overburden stockpile pump back system caused a 100-gallon spill of water to tundra); and June 3, 2001 (leak of reclaim water traveling down the side of the tailings dam caused a 900 to 29,000 gallon leak).

### D. Violation of Stormwater Management Plan

**Condition J(3)(f)(iv) construction site erosion control for stormwater.** Teck Cominco is required to implement measures to prevent erosion and sedimentation at construction sites, and to prevent stormwater from coming into contact with construction materials. On May 31, 2001, Teck Cominco violated this requirement when an inspection of construction and exploration activities revealed that shot rock and sediment were being deposited into the clean water bypass.

### E. Self-Monitoring Violations

In addition to violating the discharge limitations of its NPDES permit, Teck Cominco has violated and continues to violate the monitoring requirements of its mine site permit. Kivalina RPC is informed and believes that these violations are ongoing, and intends to sue Teck Cominco for the following violations and any future monitoring violations:

**Failure to Properly Monitor Discharge from Outfall 001 (Permit condition I(A)(1)):** September 1998 (failure to report results for fecal coliform and BOD); September 1999 (failure to take weekly samples for turbidity); June 2000 (no sample taken for OPPS; no results reported for silver); June 10, 2000 (no grab sample taken for turbidity); June 13, 2000 (no grab sample taken for turbidity); July 10, 2000 (no results reported for total suspended solids); July 22, 2000 (failed to take 24-hour composite sample for turbidity); August 3, 2000 (no results reported for total suspended solids); September 2000 (no results reported for selenium); September 2001 (samples for BOD and organic priority pollutants taken from water that was not discharged through Outfall 001).

**Failure to Conduct Required Ambient Monitoring (Permit condition I(D)(1)):** June 2000 (failure to analyze samples for metals at Stations 10, 12, and 140); October 2000 (failure to analyze for cyanide at Stations 10 and 20); June 2001 (failure to analyze ammonia twice, as required, at Station 10; failure to analyze ammonia at Station 73; failure to analyze two samples of weak acid dissociable cyanide from Station 20); July 2001 (failure to take second ammonia sample at Station 73); May 2002 (failure to monitor total hardness at Station 140; failure to monitor ammonia at Station 9; failure to monitor total hardness at Station 12).

**Failure to Conduct Required Ambient Monitoring (Permit condition I(D)(3)):** November 1-6, 2002 (failure to report aluminum, cadmium, chromium, copper, iron, lead, manganese, nickel, and zinc for Sulfur Creek ambient monitoring as required until thirty days after complete cessation of discharge, totaling nine violations).

**Failure to Conduct Required Ambient Monitoring (Permit condition I(D)(7)):** September 2002 (failure to measure turbidity three times, as required, at Station 140); October 2002 (failure to monitor dissolved oxygen at station 10 when the ambient temperature was greater than 25° F, three times per month as required; failure to monitor dissolved oxygen at station 2, three times as required; failure to monitor dissolved oxygen at station 73, three times as required); May 2003 (failure to report cyanide at station 20 as required two times per month; failure to monitor dissolved oxygen at station 10 when the ambient temperature was greater than 25° F, three times per month as required; failure to monitor dissolved oxygen at station 2, three times as required; failure to monitor dissolved oxygen at station 73, three times as required).

**Failure to Conduct Required Ambient Monitoring (Permit condition I(D)(8)):** October 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31, 2002 (failure to report daily stream flow at stations 2, 8, 9, 10, 12 and 140 as required, totaling 89 violations (15 days times six stations, minus one stream flow report at station 2 on October 17, 2002)); November 1, 2, 3, 4, 5 and 6, 2002 (failure to report daily stream flow at stations 2, 8, 9, 10, 12 and 140 as required, totaling thirty-six violations); May 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31, 2003 (failure to report daily stream flow at stations 2, 8, 9, 10, 12 and 140 as required, totaling 138 violations).

**Failure to Record Volume of Mine Drainage Pumped (Permit Condition I(C)(4)):** July 12, 2001.

**Failure to Conduct WET Testing (Permit condition I(H)(4)):** August 1998 (Outfall 001, Station 9, Station 12, Station 140); September 1998 (failure to report WET test for Station 9 and Station 140); August 1999 (test failure at Stations 9 and 12, and Outfall 001); August 2, 3 and 4, 2001 (Outfall 001); July 2002 (WET testing samples for station 9 only used one aliquot of water); August 2002 (WET testing samples for station 9 only used one aliquot of water); October 2002 (WET testing samples for station 9 only used two aliquots of water).

**III. KIVALINA RPC NOTIFIES TECK COMINCO OF ITS INTENT TO SUE TECK COMINCO FOR VIOLATIONS OF THE PORT SITE NPDES PERMIT.**

**Teck Cominco has violated the terms of its port site permit (permit no. AK 004064-9) on more than 1,654 occasions.** Kivalina RPC intends to sue Teck Cominco for all past and ongoing violations of its NPDES permit.

**A. Spills and Non-Routine Discharges of Pollutants to Tundra**

**Condition I(A)(1) spills and non-routine discharges not permitted.** Teck Cominco's port site permit specifically prohibits spills and non-routine discharges of pollutants. Kivalina RPC intends to sue Teck Cominco for violations of this provision on August 12, 2000 (900 gallons of CSB drainage water overflowed onto the tundra); May 18, 2001 (leak in pipeline conveying CSB drainage water caused a spill of 175 gallons of waste water); May 27, 2001 (leak in the pipeline conveying CSB drainage water caused a spill of 500 gallons of waste water); and May 29, 2001 (leak in pipeline conveying CSB drainage water caused a spill of 500 gallons of waste water).

**B. Toxic Substances: Zinc, Cadmium, Lead, Fecal Coliform, and Chlorine**

Teck Cominco's storage of zinc and lead concentrates in the CSB and its sewage treatment operations cause it to discharge toxic substances to the tundra and the Chukchi Sea in violation of its permit limits. Kivalina RPC is informed and believes that Teck Cominco has violated and will continue to violate its permit limits for cadmium, lead, chlorine, and fecal coliform. Kivalina RPC intends to sue Teck Cominco for all past and ongoing violations of the terms of its port site permit.

**Condition I(B)(5) Zinc Daily Maximum Discharge violations.** Condition I(B)(5) for zinc requires that discharges of zinc to the Chukchi Sea contain less than a daily maximum of 1500 ppb and that discharges of zinc to the tundra meet a limit of 77.1 ppb as a daily maximum discharge.

Teck Cominco's storage of zinc concentrate at the Concentrate Storage Building ("CSB") causes discharges containing high quantities of zinc to the tundra and to the Chukchi Sea. The concentrations of zinc in discharge to the Chukchi Sea are approximately 200 percent greater than permitted by the terms of the port site permit. Kivalina RPC intends to sue Teck Cominco for the following violations of its permit:

**1999:** May 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; August 1, 2, 3, 4, 5, 6, 7, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; September 1, 2, 3, 4, 5, 12, 13, 14, 15, 16<sup>3</sup>, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28,

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<sup>3</sup>All discharges prior to September 16, 1999 were to the tundra; subsequent discharges violate permit limits for discharges to the Chukchi Sea.

29 and 30; October 1.

**2000:** May 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; and October 1, 2, 3, 4 and 5.

**Condition I(B)(5) Zinc Average Monthly Discharge violations.** Condition I(B)(5) for zinc requires that discharges of zinc to the Chukchi Sea contain less than a monthly average of 750 ppb and that discharges of zinc to the tundra meet a limit of 38.4 ppb per day as a monthly average discharge.

Teck Cominco has violated its permit limits on the monthly average for discharges of zinc in most months in which Teck Cominco discharges from Outfall 005. Kivalina RPC intends to sue Teck Cominco for violation of the monthly average daily limit in the following months: May 1999, June 1999, July 1999, August 1999, September 1999, October 1999, May 2000, June 2000, July 2000, August 2000, September 2000, October 2000, and for any violations of the monthly average that occur during 2003. Because federal courts have consistently held that violations of a monthly average limit mean that the permit was violated on each day the facility operated that month, Kivalina RPC intends to sue Teck Cominco for violation of this permit condition on the following days:

**1999:** May 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; August 1, 2, 3, 4, 5, 6, 7, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; September 1, 2, 3, 4, 5, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; October 1.

**2000:** May 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; and October 1, 2, 3, 4 and 5.

**Condition I(B)(5) Cadmium Daily Maximum and Monthly Average Discharge to Tundra violations.** Condition I(B)(5) for cadmium requires that discharges of cadmium to the tundra meet a limit of 4.6 ppb as a daily maximum discharge and 2.3 ppb per day as a monthly average discharge. Kivalina RPC intends to sue Teck Cominco for all past and ongoing violations of the port site permit, including but not limited to those on the following dates in 1999 when Teck

Cominco violated its port site permit conditions for daily maximum discharge of cadmium to the tundra: May 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; in July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; August 1, 2, 3, 4, 5, 6, 7, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; and September 1, 2, 3, 4, 12, 13, 14, 15 and 16.

Teck Cominco violated the monthly average discharge limit for discharges of cadmium to the tundra in May 1999, June 1999, July 1999, August 1999, and September 1999. Because federal courts have consistently held that violations of a monthly average limit mean that the permit was violated on each day the facility operated that month, Kivalina RPC intends to sue Teck Cominco for violation of this permit condition on the following days:

**1999:** May 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; August 1, 2, 3, 4, 5, 6, 7, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; September 1, 2, 3, 4, 5, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30.

**Condition I(B)(5) Cadmium Daily Maximum and Monthly Average Discharge to Chukchi Sea violations.** Condition I(B)(5) for cadmium requires that discharges of cadmium to the Chukchi Sea contain less than a daily maximum of 100 ppb and less than a monthly average of 50 ppb per day.

Teck Cominco violated its port site permit conditions for daily maximum discharge and monthly average discharge of cadmium to the ocean in June 2000. Because federal courts have consistently held that violations of a monthly average limit mean that the permit was violated on each day the facility operated that month, Kivalina RPC intends to sue Teck Cominco for violation of this permit condition on the following days: June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30.

**Condition I(B)(5) Lead Daily Maximum and Monthly Average Discharge to Tundra violations.** Condition I(B)(5) for discharges of lead to the tundra requires that the discharges meet a limit of 22.5 ppb as a daily maximum discharge and 11.2 ppb per day as a monthly average discharge.

Teck Cominco violated its port site permit conditions for daily maximum discharge of lead to the tundra in 1999 on May 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; in July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; August 1, 2, 3, 4, 5, 6, 7, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; September 1, 2, 3, 4, 12, 13, 14, 15 and 16.

Teck Cominco violated the monthly average discharge limit for discharges of lead to the tundra in May 1999, June 1999, July 1999, August 1999, and September 1999. Because federal courts have consistently held that violations of a monthly average limit mean that the permit was violated on each day the facility operated that month, Kivalina RPC intends to sue Teck Cominco for violation of this permit condition on the following days:

**1999:** May 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; August 1, 2, 3, 4, 5, 6, 7, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; September 1, 2, 3, 4, 5, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30.

**Condition I(B)(5) Lead Daily Maximum and Monthly Average Discharge to Chukchi Sea violations.** Condition I(B)(5) for lead requires that discharges of lead to the Chukchi Sea contain less than a daily maximum of 600 ppb and less than a monthly average of 300 ppb per day.

Teck Cominco violated its port site permit conditions for daily maximum discharge and monthly average discharge of lead to the ocean in September 1999, June 2000, and October 2000. Because federal courts have consistently held that violations of a monthly average limit mean that the permit was violated on each day the facility operated that month, Kivalina RPC intends to sue Teck Cominco for violation of this permit condition on the following days:

**1999:** September 1, 2, 3, 4, 5, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30.

**2000:** June 1, 2, 3, 4, 5, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; October 1, 2, 3, 4 and 5.

**Condition I(A)(3) Daily Maximum Discharge of Total Suspended Solids (TSS) violations.** Condition I(A)(3) for TSS requires that discharges of TSS to the Chukchi Sea contain less than a daily maximum of 30 mg/L TSS . Teck Cominco violated its port site permit conditions for daily maximum discharge to the ocean in May 2002.

**Condition I(A)(1) Fecal Coliform Daily Maximum Discharge violations.** Condition I(A)(1) requires that discharges from the sewage treatment plant contain concentrations of fecal coliform below a daily maximum of 1200 mg/L. Teck Cominco violated its NPDES permit limits for daily maximum discharge of fecal coliform on February 8 and 15, 1999; March 15, 1999; May 18, 1999; June 2 and 24, 1999; July 9, 1999; September 7 and 8, 1999; December 28, 1999; and April 18 and 25, 2000.

**Violations for Discharge of Chlorine without a permit.** Teck Cominco's sewage treatment operations cause it to discharge chlorine into the Chukchi Sea through Outfall 001. Teck Cominco's

NPDES permit does not authorize the discharge of chlorine through Outfall 001. Therefore, Teck Cominco is in violation of its NPDES permit on all dates on which it discharges chlorine through Outfall 001. Kivalina RPC intends to sue Teck Cominco for all past and ongoing violations of the port site permit, including but not limited to those on the following dates:

**1999:** August 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; October 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31, November 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27; December 19, 20, 21, 23, 24, 27 and 31.

**2000:** February 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 23, 25, 26, 27, 28 and 29; March 1, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; April 6, 28 and 29; May 1, 2, 3, 4, 6, 7, 8, 10 and 11; July 1 and 2.

**2001:** March 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; April 9; May 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; July 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; October 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; November 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; December 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31.

**2002:** January 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; April 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; May 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30; October 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18.

**Violations for other Unpermitted Discharges.** Teck Cominco's permit does not allow unpermitted discharges. Kivalina RPC intends to sue Teck Cominco for all past and ongoing violations of the port site permit, including but not limited to unpermitted discharges from the Port Facility on August 12, 2001 (run-off resulted in overflow of treatment system at Outfall 005); on May 9, 2002 (100 gallon leak from pipeline); and on May 10, 2002 (1000 gallon run-off of untreated water to the tundra).

### C. Biosolids Requirements

**Condition II Biosolids Requirements.** Condition II requires biosolids, or sewage sludge, to be disposed of by co-incineration. Teck Cominco violated its port site permit conditions by not co-incinerating its biosolids during the following months: September 2002, October 2002, November 2002, and December 2002.

### D. Self-Monitoring Violations

In addition to violating discharge limitations of its NPDES permit, Teck Cominco has violated and continues to violate monitoring requirements of its port site permit. Kivalina RPC is informed and believes that these violations are ongoing, and intends to sue Teck Cominco for the following violations and any future monitoring violations:

**Failure to Properly Monitor Discharge from Outfall 001 (Permit Condition I(A)(1)):** February 1999 (only one sample analyzed for fecal coliform); April 1999 (weekly analysis for BOD not conducted in two weeks); April 1999 (only two samples analyzed for fecal coliform); August 1999 (sample not analyzed for salinity); May 8, 2000 (weekly samples not analyzed); May 29, 2000 (weekly samples not analyzed); and February 4, 2001 (weekly samples not analyzed); July 2001 (failure to conduct adequate WET tests); August 2001 (failure to conduct adequate WET tests); September 2001 (failure to conduct adequate WET tests); April 10, 2002 (failure to analyze fecal coliform); May 2002 (failure to monitor total hardness and copper); July 2002 (failure to conduct WET test on *Mysidopsis bahia* or *Holmesimysis costata*); August 2002 (failure to conduct WET test on *Mysidopsis bahia* or *Holmesimysis costata*); September 2002 (failure to conduct WET test on *Mysidopsis bahia* or *Holmesimysis costata*).

**Failure to Properly Monitor Discharge from Outfall 005 (Permit Condition I(B)(5)):** May 2000 (failure to continuously monitor flow and pH); May 2000 (failure to monitor discharge hardness); June 22, 2000 (failure to monitor total suspended solids); July 7 and 26, 2000 (failure to monitor for total suspended solids); August 9, 2000 (failure to monitor for total suspended solids); June 3, 4, 5, 6, 7, 8 and 9, 2001 (failure to monitor for pH); July 2001 (failure to conduct adequate WET tests); August 2001 (failure to conduct adequate WET tests); and September 2001 (failure to conduct WET tests).

## **IV. KIVALINA RPC NOTIFIES TECK COMINCO OF ITS INTENT TO SUE UNDER THE CLEAN WATER ACT FOR VIOLATIONS OF EPA'S COMPLIANCE ORDERS.**

In addition to repeatedly violating its permit limits, Teck Cominco has also violated its Compliance Orders by Consent ("COBC") (Docket Nos. CWA-10-99-0167 ("Mine COBC"), issued by the EPA on July 1, 1999, and modified on May 17, 2002; and CWA-10-99-0200 ("Port COBC"), negotiated with EPA in 1999 and modified in January 2002).

A. Violations of Mine COBCs

Under the Mine COBCs, Teck Cominco measures its compliance with increased TDS discharge limits at Stations 10 and 160, points downstream of Outfall 001, until May 17, 2002, the Mine COBC required measuring TDS at Stations 10 and 7. Teck Cominco must limit its discharge of TDS so that concentrations of TDS remain below 1500 mg/L at Station 10, and with exceedences below 1600 mg/L permissible if these do not continue for more than 48 hours in any 10 day period. At Station 160 (and formerly at Station 7), TDS concentrations must not exceed 500 mg/L from July 25 through the end of the discharging season. Kivalina RPC intends to sue Teck Cominco for its violations of its compliance order, including but limited to violations that took place on the following dates:

Station 7: July 27, 1999; July 25, 2001; August 27, 28 and 29, 2001.

Station 10:

**1999**: June 24, 26, 27, 28, 29 and 30; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 14, 15, 17 and 18; September 12; October 1 and 5.

**2000**: June 22, 23, 24, 25, 26, 27 and 28; July 5, 6, 7, 8 and 11.

**2001**: October 7 and 8.

**2002**: May 28 and 29; June 3, 6 and 24.

Kivalina RPC is informed and believes that the same discharge practices that caused Teck Cominco to repeatedly violate the Mine COBC at Station 7 will cause it to continue to violate the Modified Mine COBC at Station 160. KRPC intends to sue for any future violations of the COBC it identifies.

Teck Cominco has also failed to conduct monitoring operations in accordance with its compliance order. Kivalina RPC intends to sue Teck Cominco for its violations of monitoring requirements in the Mine COBC that took place on July 14, 2000 and May 30, 2001.

Teck Cominco has also failed to report all data and calculations specified in the Mine COBC. Kivalina RPC intends to sue Teck Cominco for its violations of the reporting requirements in the Mine COBC, including but not limited to failing to timely report COBC data for Station 7 for July 25, 26, 27, 28, 29, 30 and 31, 2001; and for failing to timely report the May 2002 COBC data.

The Mine COBC requires Teck Cominco to come into compliance with the terms of its NPDES permit by August 28, 2003.

**B. Violations of Port COBC**

Under the terms of Port COBC, Teck Cominco is prohibited from discharging chlorine from Outfall 001 in concentrations greater than 0.5 mg/L. In 1999, Teck Cominco violated this provision on August 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 23; September 1, 2 and 3; and November 8.

Teck Cominco was also required to eliminate discharges from the CSB to the tundra by installing technology to divert discharges from the tundra to the Chukchi Sea. Under the then-operative COBC, discharges of zinc to the Chukchi Sea were required to be under 25,343 ppb as a maximum daily limit and under 12,631 ppb per day for the average monthly limit. Teck Cominco was required to come into compliance with the port site permit by July 31, 2001. Cominco violated this compliance order in June 2000, when discharges on June 22 exceeded the maximum daily limit for zinc. Cominco also exceeded the monthly average limit of discharge for zinc for June 2000. Because federal courts have consistently held that violations of a monthly average limit mean that the permit was violated on each day the facility operated that month, Kivalina RPC intends to sue Teck Cominco for violation of this COBC condition on the following days in 2000: June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30.

**V. POTENTIAL FINES FOR TECK COMINCO'S VIOLATIONS ARE IN EXCESS OF \$112,000,000.**

Kivalina RPC intends to sue Teck Cominco for all violations of the Clean Water Act. The maximum penalty for each violation of the Clean Water Act is \$27,500. 40 C.F.R. § 19.4. Teck Cominco's total violations of the Clean Water Act and potential penalties are therefore set forth below in Table I.

**Table I: Permit Violations and Potential Penalties****Mine Site Permit (No. AK 003865-2):**

	Total Violations	Total Penalty
TDS	1208	\$33,220,000
Other Substances	774	\$21,285,000
Leaks	8	\$220,000
Monitoring and Reporting	332	\$9,130,000
<b>Total Mine Site</b>	<b>2322</b>	<b>\$63,855,000</b>

**Port Site Permit (No. AK 004064-9):**

	Total Violations	Total Penalty
Toxic Substances	1611	\$44,302,500
Other Violations	8	\$220,000
Monitoring and Reporting	35	\$962,500
<b>Total Port Site</b>	<b>1654</b>	<b>\$45,485,000</b>

**Violations of Compliance Order**

	Total Violations	Total Penalty
Mine (Docket No. CWA-10-99-0167)	55	\$1,512,500
Port (Docket No. CWA-10-99-0200)	53	\$1,457,500
<b>Total Compliance Orders</b>	<b>108</b>	<b>\$2,970,000</b>
<b>Violations</b>		
<b>Total Violations:</b>	<b>4,084</b>	
<b>Total Penalty:</b>		<b>\$112,310,000</b>

## **VI. PERSONS RECEIVING NOTICE THROUGH THIS LETTER.**

In accordance with the Clean Water Act and its regulations, with this letter, Kivalina RPC gives notice of the violations of its NPDES Permit to Robert Jacko, General Manager, Teck Cominco Alaska Incorporated and Laurence L. Hartig, Agent for Service of Process, Teck Cominco Alaska Incorporated, Hartig, Rhodes, Norman, Mahoney & Edwards. Kivalina RPC also gives notice to the EPA Administrator, the EPA Regional Administrator, the Commissioner of Alaska Department of Environmental Conservation, the Commissioner of Alaska Department of Fish and Game, and the US Attorney General.

## **VII. THE IDENTITY OF THE PERSONS GIVING THIS NOTICE.**

The Kivalina Relocation Planning Committee is a six-member body appointed by the Native Village of Kivalina IRA and the Kivalina City Council to address planning issues, including the identification of drinking water sources, in the Native Village of Kivalina. The members of Kivalina RPC are representatives of the Kivalina IRA, the City Council, the community at-large, community elders, and the education community. Enoch Adams, Jr., Leroy Adams, Andrew Koenig, Jerry Norton, David Swan, and Joseph Swan are all members of Kivalina RPC, and reside in Kivalina, drink water from the Wulik River, and hunt, fish, and gather food in the vicinity of the mine and port site for their basic subsistence. Kivalina RPC and the individual noticers intend to sue Teck Cominco for the violations of the Clean Water Act discussed in this letter.

If Teck Cominco wishes to negotiate with Kivalina RPC, its attorneys should contact the attorneys for Kivalina RPC immediately. Kivalina RPC will file suit 60 days from the date of this notice.

### **Noticing Parties**

Enoch Adams, Jr.  
 Leroy Adams  
 Andrew Koenig  
 Jerry Norton  
 David Swan  
 Joseph Swan  
 Kivalina RPC  
 Native Village of Kivalina  
 Kivalina, Alaska 99750  
 Telephone: (907) 645-2138

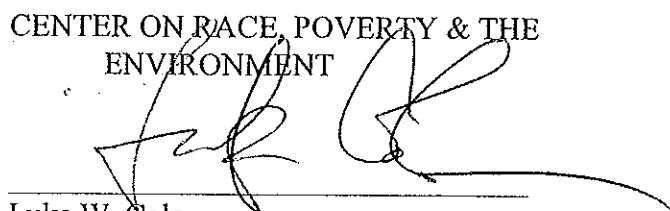
### **Attorneys for Noticing Party**

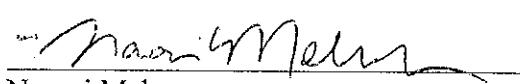
Luke W. Cole, Director  
 Center on Race, Poverty, and the Environment  
 450 Geary Street, Suite 500  
 San Francisco, CA 94105  
 Telephone: (415) 346-4179 x2  
 Fax: (415) 346-8723

We look forward to talking with you about ceasing Red Dog Mine's pollution of Kivalina RPC's environment.

Sincerely,

CENTER ON RACE, POVERTY & THE  
ENVIRONMENT

  
Luke W. Cole

  
Naomi Melver

cc: (By Certified Mail, Return Receipt Requested)

Ms. Linda J. Fisher, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

John Ashcroft, Attorney General  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

Kevin C. Duffy, Commissioner  
Alaska Department of Fish and Game  
1255 West Eighth Street  
PO Box 25526  
Juneau, Alaska 99802

Gregg D. Renkes, Attorney General  
Alaska Department of Law  
PO Box 110300  
Juneau, Alaska, 99811-0300

L. John Iani, Regional Administrator  
U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Avenue  
Seattle, Washington 98101

Ernest Ballard, Commissioner  
Alaska Department of Environmental  
Conservation  
410 Willoughby Avenue, Suite 303  
Juneau, Alaska 99801-1795